

SUPREME COURT

STATE OF MICHIGAN

OCT 2005

IN THE SUPREME COURT

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PEOPLE OF THE STATE OF MICHIGAN,

Supreme Court No.: 125250

Plaintiff/Appellee,

C.A. No.: 242050

-vs-

Circuit Court No.: 01-177534-FC

NICHOLAS JACKSON,

Defendant/Appellant.

MUSILLI, BRENNAN & LETVIN, PLLC

RALPH MUSILLI, P18132

DENNIS M. FULLER, P40666

Attorney for Defendant/Appellant

24001 Greater Mack Avenue

St. Clair Shores, Michigan 48080

(586) 778-0900

DANIELLE DEJONG, P52042

Assistant Prosecuting Attorney

1200 N. Telegraph Road

Pontiac, Michigan 48341

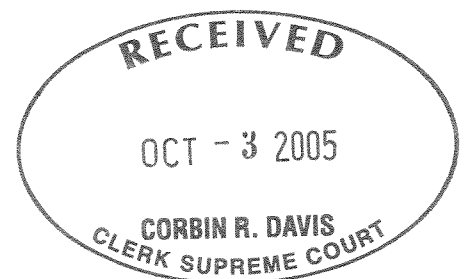
(248) 858-0685
_____APPELLANT'S REPLY BRIEF

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STATEMENT OF FACTS

Defendant Mr. Jackson relies on the Statement of Facts set forth in his brief on Appeal. Mr. Jackson also calls the Court's attention to Appellee's assertion that Tony Hines did not appear at the Preliminary Examination in the matter because he was in the hospital. (Appellee's Brief at p. 3, citing Appellee's Appendix at p. 43b - 44b). The Prosecutor produced no evidence, documentary or other, to support the assertion, and Mr. Jackson is unaware of any such evidence. The Prosecutor apparently made the assertion that Tony Hines was not available to give testimony at the Preliminary Examination in an effort to create some type of an excuse for his non-appearance. Regardless, the fact remains that Tony Hines was not present at the Preliminary Examination, and as a result, Mr. Jackson was deprived of the opportunity to cross-examine Tony Hines.

Appellee's Brief makes another misstatement of fact in its Brief on page 10, footnote 68, where it is alleged that testimony revealed that "after the incident the Defendant was not to have contact with the victim, not the complainant...". This assertion is incorrect. The witness testimony referred to in Appellee's Brief is that of Dolores Hines, who stated that Nicholas Jackson appeared in Michigan on or about November 16th or 17th, 2000, and that "Nick and Anthony at that time could not be around each other". (Appellant's Appendix p. 7a). The testimony is regrettably unclear regarding which "Anthony" Ms. Hines is referring to in this statement, however the no contact provision was concerning Nicholas Jackson and Tony Hines, not Nicholas Jackson and Anthony Hines. If the state of affairs regarding the no contact issue were as the Prosecutor alleges, then the Prosecutor would have proposed documentary evidence of same at Trial, and the admissibility of such a no contact provision would have been an issue litigated at Trial. The fact that the alleged no contact provision between Mr. Jackson and Anthony Hines was not raised by the Prosecutor at Trial only underscores the fact that no such provision existed.

ARGUMENT

I. APPELLEE'S ALLEGATION THAT THE ERRORS BELOW ARE HARMLESS IS WITHOUT MERIT.

In section IA of Appellee's Brief, the Prosecutor asserts that the Trial Court's admission of Tony Hine's statements was harmless error because Mr. Jackson's written and oral statements supported Anthony Hine's accusations of abuse by Mr. Jackson. This assertion is fallacious because it is based on the false assumption that the evidence at Trial consisted of only Anthony Hine's statements, Tony Hine's statements, and Mr. Jackson's statements, and the assumption that the other evidence at issue in the matter, both admitted and barred by the Trial Court, is of no consequence. The Prosecutor's allegations notwithstanding, the instant matter was not tried in a vacuum.

As set forth in Appellant's Brief on Appeal, the Trial court's various evidentiary rulings prevented Mr. Jackson from explaining what occurred on the night in question between him and Anthony Hines in light of Tony Hine's potential motives and history. In particular, the Trial Court's Orders prevented Mr. Jackson from arguing that Tony Hines was guilty of the crime charged, fellatio, as a principal. Where a person utilizes or uses another person to accomplish a crime on his behalf, the first person is guilty as a principal. People v. Hack, 219 Mich App 299, 302-304 (1996). Mr. Jackson's position is that Tony Hines played a pivotal role in creating the incident.

In this regard, the only evidence that Mr. Jackson was allowed to present regarding Tony Hine's motives, was his testimony that he did not believe Anthony himself decided to perform fellatio, and that Tony Hines' entry into the bedroom during the incident was something which could be explained "if you knew more about him [Tony Hines]". (Testimony of Nicholas Jackson t - vol, V - p 234-241).

The Court should also note that in the Appellee's Brief, the Prosecutor states that the admission of Tony Hines' statements at Trial supported Mr. Jackson's defense (Appellee's Brief p. 11). However, the harmless error analysis does not dictate an examination of each individual piece of evidence. Rather, it required the Prosecutor to show that the error is harmless beyond a reasonable doubt. The Prosecutor cannot meet this burden.

CONCLUSION

For all of the above stated reasons the Court should vacate the verdict below.

Respectfully submitted,

MUSILLI, BRENNAN & LETVIN, PLLC

Dated: September 29, 2005

By: 

Ralph Musilli, P18132

Dennis M. Fuller, P40666

MUSILLI, BRENNAN & LETVIN, PLLC
24001 Greater Mack, St. Clair Shores, MI 48080-1408
586-778-0900, Fax 586-778-1204

Abstract.

MUSILLI, BRENNAN & LETVIN, PLLC
24001 Greater Mack, St. Clair Shores, MI 48080-1408
586-778-0900, Fax 586-778-1204

in the above-captioned matter upon:

MICHAEL COX, P43039
ATTORNEY GENERAL
DEPARTMENT OF ATTORNEY GENERAL
7th Floor G Mennen Wms Building
P.O. Box 30212
Lansing, Michigan 48909
(517) 373-1110

DANIELLE DEJONG, P52042
Assistant Prosecuting Attorney
1200 N. Telegraph Road
Pontiac, Michigan 48341
(248) 858-0685

by placing the same in a United States mail deposit box in the City of St. Clair Shores, Michigan, in a sealed envelope with sufficient postage affixed thereto for first class mail addressed to the above-named Attorney(s)/Individual(s).


I declare under penalty of perjury that the statements contained above are true to the best of my knowledge and belief.


Amanda J. Miller

SWORN AND SUBSCRIBED to before me this 29th day of September, 2005.

My Commission Expires:

IDA WINANS
Notary Public, State of Michigan
County of St. Clair
My Commission Expires Jan. 1, 2011
Acting in the County of Macomb


Notary Public, Ida Winans